IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3306 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHILA STATIONERY UTPADAK AND VECHAN SAHAKARI MANDALI LTD.

Versus

DY.SECRETARY

Appearance:

MR PK JANI for Petitioner

MR M.A.BUKHARI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 29/03/2000

ORAL JUDGEMENT

Rule. Mr. M.A. Bukhari, learned AGP appears and waives service of rule on behalf of the respondents. In the facts and circumstances, the matter is taken up for final hearing today.

This petition is filed against the order passed by the Registrar and confirmed by the appellate as well as revisional authorities,being illegal, ultra vires and violative of principles of natural justice.

The case of the petitioner was that it is a Mahila Stationery Utpadak and Vechan Sahkari Mandali Limited (`Society' for short). It was registered on 21st November 1996 having its registration number U- 5881. According to the petitioner, in accordance with law, certain persons were registered as members of the society. It was alleged by the District Registrar (Industries) Industry Centre, Mehsana that 36 persons who were registered as members were already registered with other society andwere again registered as members by the petitioner society. That could not have been done and the action was illegal. A notice was,therefore, issued by the Registrar to the petitioner society as to why their names should not be removed from the membership of the petitioner society. Registrar was satisfied that such action was required to be taken and accordingly, hearing of th matter was fixed and notice was issued to the advocate of the petitioner on 17th/18th October, 1997, Annexure `C', wherein, it was stated that hearing of the matter will take place on 23rd October, 1997 at 12 noon in the office of the District Industies Centre, Mehsana and that he should remain present. If the advocate would not remain present, appropriate order will be passed presuming that he had nothing to say in the matter.

On 23rd October, 1997, according to the case of the Registrar, the advocate did not remain present and hence order dated February 27, 1998 was passed removing names of 36 persons from the membership of petitioner society with added disqualification that those 36 members would not be eligible and qualified for admission to any cooperative society as members for a period of two years.

Being aggrieved by the above order, an appeal was filed before the Joint Director (Textile) at Gandhinagar . In the appeal, the appellate authority specifically refers to the argument advanced on behalf of the petitioner that a notice was issued to the advocate for the society to remain present for hearing before the District Registrar on 23rd October, 1997 at 12 noon, but the notice was received by the advocate on the same day at 1 p.m. In other words, the contention before the appellate authority was that though the advocate was asked to remain present on 23rd October, 1997 at 12 noon, the

notice was received by him thereafter i.e. at 1 p.m. . In these circumstances,he could not remain present . It is pertinent to note that the said factual assertion was not negatived by the appellate authority. The appellate authority, however, observed that the order of the Registrar cannot be said to be illegal and accordingly, the appeal was dismissed.

A revision application was filed before the State Government being aggrieved by the order passed by the appellate authority . Before the revisional authority also, the said contention was reiterated that notice was not received by the advocate in time inasmuch as hearing was fixed at 12 noon on 23rd October, 1997, but the notice was received at 1 p.m. In spite of that, the revisional authority held that sufficient opportunity was given to the petitioner and on merits, the order cannot be said to be bad in law.

In my opinion, the petition deserves to be allowed only on the ground that no sufficient opportunity of hearing was afforded to the petitioner. When adjournment was granted to the petitioner and hearing was fixed on 23rd October, 1997 , it was obligatory on the part of the District Registrar to ensure that the petitioner or his advocate is informed in advance so as to enable him to remain present for hearing. It was the specific case of the petitioner before all the three authorities viz. District Registrar, appellate authority and the revisional authority that notice issued by the District Registrar directing the petitioner's advocate to remain present on 23rd October, 1997 at 12 noon was received by the advocate on 23rd October, 1997 at 1 p.m. . No finding was recorded by any of the authorities that notice was received prior to 23rd October, 1997 and that contention raised by the advocate was not factually correct.

In these circumstances, in my opinion, the District Registrar ought to have proceeded with the matter and ought not to have passed the order. On that ground alone, the petition deserves to be allowed and is accordingly allowed. Order of the District Registrar confirmed by the appellate authority as well as revisional authority is quashed and set aside. The matter will now go back to the District Registrar to decide the same in accordance with law.

Since I am setting aside the orders passed by all the authorities on the ground that no opportunity of hearing was afforded to the petitioner,I am not expressing any

opinion on merits of the matter one way or the other. Mr. Bukhari has stated that the authorities have considered merits of the matter. Obviously, after the notice is issued to the petitioner and/or his advocate, the matter will be taken up for hearing by the Registrar. It is open to the Registrar to pass order in accordance with law and the observations made hereinabove will not come in his way in passing appropriate order on merits.

Rule is accordingly made absolute. No order as to costs.

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parekh